IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION LODG. NO.3166 OF 2004

Mrs.Arati Malik)..PETITIONER

Versus

The State of Maharashtra & Ors.)..RESPONDENTS

Mr. M.M. Khokhawala, for the Petitioner.

CORAM: F.I. REBELLO J.
DATE : 6th December, 2004

P.C.:

. The petitioner is a practising Advocate who was engaged in proceedings to appear by the Respondent Nos. 1, 2, 3 and 4B. The petitioner herein was not representing the Opponent No.4A and 4C and Opponent No.5. The opponent Nos.2 to 5 are partners of opponent No.1. From the cause title it also appears tat they are all relatives. They were duly served.

2. The grievance of the petitioner herein is that since she had no instructions from the said Opponents she applied for withdrawal of appearance and had also caused notice to be served on the Opponents whom she represented. However, the notices were returned unserved on the ground that the Opponents were not found and had left. The service was sought to be effected both by Courier and by Speed Post. The learned Judge of the Co-operative Court before whom the application was made by the petitioner has noted the fact, however has rejected the application of the petitioner to withdraw her

appearance. It is the case of the petitioner that though she had no instructions she has been directed to argue the matter. The further grievance is that the petitioner has been called upon to pay costs for serving the order passed by the Court on the said opponents. In so far as the grievance of the petitioner that she has been called upon to pay the cost of notice to Opponent Nos.1, 2, 3 and 4-B on instructions learned Counsel for the petitioner now states that the petitioner is willing to pay the costs for issuing notices.

3. An Advocate who has no instructions who has put in appearance cannot be forced to argue a matter. At the highest the Court can proceed without any arguments advanced on behalf of Opponents whom she was representing. In the instant case prima facie the petitioner took steps to intimate the opponents that she chooses to withdraw her appearance. Therefore, there has been substantial compliance. However, I do not propose to intervene with the direction of the Court to serve the said opponents once again at the cost of the petitioner as the petitioner herself has not opposed the same.

4. In the light of that though the petitioner has not been relieved from appearance the Court cannot force her to argue on behalf of the Opponent Nos. 1, 2, 3 and 4B from whom she has no instructions. The Court may proceed in the absence of any arguments on behalf of the said opponents 1 to 3 and 4B. If after service of notice by the Court the said opponents cannot still be served the Court will be duty bound

to relieve the petitioner from her appearance. With the above observations petition disposed of.

. Personal secretary to issue ordinary copy of this order to the parties. All authorities to act on the authenticated copy of this order.

(F.I.REBELLO J.)